

1 Jeffrey L. Hartman, Esq.
 2 Nevada Bar No. 1607
HARTMAN & HARTMAN
 3 510 W. Plumb Lane, Suite B
 Reno, NV 89509
 4 T: (775) 324-2800
 F: (775) 324-1818
notices@bankruptcyreno.com

5 Attorney for Christina Lovato, Chapter 7
 Trustee

6 Michael S. Budwick, Esq.
 7 Florida Bar No. 938777 (admitted *pro hac*)
mbudwick@melandbudwick.com

8 Solomon B. Genet, Esq.
 9 Florida Bar No. 617911(admitted *pro hac*)
sgenet@melandbudwick.com

10 Gil Ben-Ezra, Esq.
 11 Florida Bar No. 118089 (admitted *pro hac*)
gbenezra@melandbudwick.com

12 **MELAND BUDWICK, P.A.**
 13 3200 Southeast Financial Center
 200 South Biscayne Boulevard
 Miami, Florida 33131
 14 T: (305) 358-6363
 F: (305) 358-1221
Attorneys for Christina Lovato, Chapter 7
 Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

14 In re
 15 DOUBLE JUMP, INC.
 16 Debtor.

17 Lead Case No.: BK-19-50102-gs
 (Chapter 7)

18 Jointly Administered with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

MOTION FOR ORDER APPROVING COMPROMISE AND SETTLEMENT AGREEMENT WITH KEYBANK AND SOLARSENSE PARTIES AND AWARD OF CONTINGENCY FEE

23 Hearing Date: February 4, 2021
 24 Hearing Time: 9:30 a.m.

25
 26 Christina Lovato, the duly appointed and acting trustee ("Trustee") for the chapter 7
 27 estates of DC Solar Solutions, Inc. ("Solutions"), DC Solar Distribution, Inc. ("Distribution"),
 28 DC Solar Freedom, Inc. ("Freedom, and together with Solutions and Distribution, "DC Solar")

1 and Double Jump, Inc. (“**DJ**,” and together with DC Solar, the “**DC Solar Estates**” or “**Debtors**”)
2 files this motion to approve the compromise and settlement with KeyBank National Association
3 (“**KeyBank**”); SolarSense DCS I, LLC (“**SolarSense**”); and Alternative Energy Infrastructure
4 Projects Fund I, LP (“**AEIP**,” and together with SolarSense, the “**SolarSense Parties**”) pursuant
5 to Fed.R.Bank.Proc. 9014 and 9019 (“**Motion**”). The Motion is supported by the separately filed
6 Declaration of Christina Lovato and is based upon the following discussion of facts and law. As
7 permitted by F.R.Evid. 201, the Trustee also requests the Court take judicial notice of the papers
8 on file in these jointly administered cases.

I. Factual Background

A. Procedural Background

1. Prepetition, DC Solar was engaged in a business related to manufacturing, marketing, selling, and leasing mobile solar generators (“**MSGs**”).

2. However, certain of DC Solar's insiders, including Jeff Carpoff and Paulette Carpoff ("Carpoffs"), were also perpetrating a Ponzi scheme ("Carpoff Ponzi Scheme").

3. On December 18, 2018, federal law enforcement raided DC Solar's business locations, effectively closing down DC Solar's operations.

4. In late January and early February 2019, the Debtors filed for chapter 11 relief before this Court, commencing these bankruptcy cases (“**Bankruptcy Cases**”).

5. On March 22, 2019, this Court converted the Bankruptcy Cases to cases under chapter 7 and appointed the Trustee as chapter 7 trustee of the Debtors' estates.¹ The Bankruptcy Cases are being jointly administered.²

B. Trustee's Claims

6. In July 2017, SolarSense purchased 416 mobile solar generators (“MSGs”) from Solutions for \$34,320,000. KeyBank financed approximately \$27.4 million of this purchase price. SolarSense leased the MSGs to Distribution, which in turn was to sublease them to T-Mobile USA, Inc. (“**T-Mobile**”). KeyBank expected the income stream from the T-Mobile sublease to be its

¹ ECF Nos. 439-40.

² ECF Nos. 97 & 889.

1 primary collateral and source of repayment. However, the T-Mobile sublease was fake. Jeff
 2 Carpoft had bribed a T-Mobile employee with \$1 million to sign the lease.³

3 7. Based on the Trustee's investigation, it appears that around April 2018 KeyBank
 4 became suspicious of the T-Mobile sublease and sought for the Debtors to repay KeyBank in full.
 5 Over the ensuing months, through August 2018, Jeff Carpoft caused the Debtors to pay KeyBank
 6 approximately \$27 million. This consisted of: (i) five monthly lease payments from Distribution
 7 in the amount of \$403,520 each; (ii) \$20,036,271.12 in four payments from Distribution
 8 (collectively, the "**Distribution Transfers**"); and (iii) \$4,940,254.93 from Solutions ("**Solutions**
 9 **Transfer**").

10 8. Jeff Carpoft provided SolarSense the option to be repaid the balance of the purchase
 11 price as well, and SolarSense declined, claiming that it believed Mr. Carpoft to be wholly
 12 legitimate. Post-petition and as a result, SolarSense filed Claim No. 63-1 in the Distribution
 13 bankruptcy case and Claim No. 110-1 in the Solutions bankruptcy case, claiming substantial
 14 unliquidated damages.

15 9. The Trustee has reviewed tens of thousands of documents and examined (per R.
 16 2004) representatives of each of KeyBank and SolarSense, as well as a representative of T-Mobile.
 17 The Trustee conducted these examinations only after seeking and obtaining this Court's approval
 18 on a contested basis for the implementation of protocols to conduct these examinations in light of
 19 challenges presented by COVID-19.⁴

20 10. The Trustee has also engaged in motion practice seeking production of documents
 21 KeyBank withheld under various claims of privilege.⁵

22 11. The Trustee has asserted potential claims against KeyBank and the SolarSense
 23 Parties, including fraudulent transfer claims pursuant to Section 548(a)(1)(A) of the Bankruptcy
 24 Code. The Trustee has not asserted claims under Section 548(a)(1)(B). The Trustee has asserted a
 25 potential claim that AEIP, a SolarSense affiliate, is a party for whose benefit the transfers were
 26

27 ³ See U.S.A. v. Hansen, Case No 2:20-cr-00016-JAM (E.D.Ca.) [ECF No. 16, Plea Agreement at A-7].

28 ⁴ See e.g., ECF Nos. 1734, 1770, 1771, 1778, 1781, 1781, 1795 and 1831.

28 ⁵ See ECF Nos. 2181, 2217, 2222, 2313, 2365, and 2400.

made pursuant to Section 550(a)(1). KeyBank and the SolarSense Parties have asserted various defenses including under Sections 548(c) and 550 of the Code.

12. Subject to Court approval, the Trustee, KeyBank, and the SolarSense Parties have reached an agreement on the terms of a settlement of their claims and have executed the Settlement Agreement attached to Trustee Lovato's Declaration as **Exhibit 1** ("Settlement Agreement"). The Trustee believes that the Settlement Agreement is in the best interests of the Debtors' estates and should be approved.

II. Settlement Terms

9 13. The key aspects of the Settlement Agreement, as more particularly described
10 therein, are the following:

- KeyBank shall pay to the Trustee \$11,625,000 (“**KeyBank Payment**”) five days after the entry of a final non-appealable order approving this Settlement Agreement (“**Effective Date**”).
- KeyBank shall have an allowed unsecured claim against the DC Solar Estates (“**KeyBank Claim**”) in the amount of \$11,625,000, pursuant to Section 502(h). KeyBank may not take any position adverse to the Trustee in the Bankruptcy Court including that it may not file any objections to claims filed by the Trustee or other creditors, except as necessary to (1) enforce its rights under this Settlement Agreement; and (2) ensure pro rata distribution of monies from the Trustee to all creditors, upon the Trustee making a distribution.
- The SolarSense Parties shall be jointly and severally responsible for paying, and will pay, the Trustee \$3,500,000 as set forth below:
 - a. \$700,000 on the Effective Date;
 - b. \$800,000 seven months after the Effective Date;
 - c. \$800,000 twelve months after the Effective Date;
 - d. \$500,000 fifteen months after the Effective Date;
 - e. \$350,000 twenty-four months after the Effective Date; and
 - f. \$350,000 thirty months after the Effective Date.

(together, the “**SolarSense Payments**”).

- The SolarSense Parties will not be entitled to a grace period. In the event any payment is not made timely the Trustee shall be entitled to the entry of an executable final judgment in the amount of the remaining payments jointly and severally as to the SolarSense Parties.

- 1 • SolarSense shall have an unsecured claim against the DC Solar Estates
 2 ("SolarSense Claim") in the amount of \$12,500,000, based on its financial loss
 3 and Section 502(h). All distributions from the Trustee to SolarSense on account of
 4 the SolarSense Claim shall be made by the Trustee to the DC Solar Estates to reduce
 5 any unsatisfied SolarSense Payments until the Trustee is paid in full. SolarSense
 6 shall not take any position adverse to the Trustee in the Bankruptcy Court including
 7 that it shall not file any objections to claims filed by the Trustee or other creditors,
 8 except as necessary to (1) enforce its rights under this Settlement Agreement; and
 9 (2) ensure pro rata distribution of monies from the Trustee to all creditors, upon the
 10 Trustee making a distribution.
- 11 • As collateral to ensure payment in full by the SolarSense Parties, SolarSense shall
 12 pledge to the Trustee (i) the SolarSense Claim; and (ii) any payment rights of any
 13 type related to any restitution, remission or forfeiture process related to Jeffrey or
 14 Paulette Carpoft or any individuals who acted in concert with them. And AEIP shall
 15 pledge to the Trustee a first position lien on its membership interests in SolarSense
 16 and a second position membership interest (junior and subordinated to the first
 17 position holder) in other entities owned by AEIP.
- 18 • Subject to and except for their obligations in this Settlement Agreement, the Trustee
 19 shall release and waive all claims against KeyBank and the SolarSense Parties.
 20 Other than the KeyBank Claim and the SolarSense Claim, KeyBank, SolarSense,
 21 and AEIP waive all claims against the DC Solar Estates or the Trustee.

14. The Settlement Agreement also provides for certain rights as between KeyBank
 15 and SolarSense that do not impact the estates.

16 III. Legal Discussion

17 15. Fed. R. Bank. P. 9019(a) provides in relevant part that "[o]n motion ... and after
 18 notice and a hearing, the court may approve a compromise or settlement."

19 16. In the Ninth Circuit, motions to approve a compromise and settlement agreement
 20 are reviewed under the four criteria set forth in In re A&C Properties, Inc., 784 F. 2d 1377, 1381
 21 (9th Cir. 1986), cert. denied, 479 U.S. 854 (1986). Those criteria are: (1) likelihood of success on
 22 merits of the claims in the underlying litigation; (2) the complexity of the litigation involved, and
 23 the expense, inconvenience and delay necessarily attending it; (3) the difficulties, if any, to be
 24 encountered in the matter of collection; and (4) the paramount interest of the creditors and a proper
 25 deference to their reasonable views in the premises.

1 17. Compromises are favored under the Bankruptcy Code, and approval of a
 2 compromise rests in the sound discretion of the Court. Protective Committee for Independent
 3 Stockholders of TMT Trailer Ferry, Inc., v. Anderson, 390 U.S. 414, 424 (1968). The bankruptcy
 4 court is afforded wide latitude in approving compromise agreements which it determines to be fair,
 5 reasonable, and adequate. In re Woodson, 839 F.2d 610 (9th Cir. 1988). The court need not conduct
 6 an exhaustive investigation into the claim sought to be compromised. In re Walsh Construction,
 7 Inc., 699 F.2d 1325, 1328 (9th Cir. 1982).

8 18. The Trustee, in her informed business judgment, submits that approval of the
 9 Settlement Agreement is in the best interests of the Debtors' estates.

10 **A. The Settlement Should Be Approved**

11 19. Based upon these principles, the Trustee submits that the Settlement Agreement
 12 falls well above the lowest point of the range of reasonableness and should be approved.

13 **Probability of success in litigation**

14 20. This is a significant consideration that militates in favor of approval of the
 15 Settlement Agreement.

16 21. While the Trustee believes her potential claims are meritorious, all litigation
 17 presents risks. Here, among other potential defenses, KeyBank and the SolarSense Parties have
 18 asserted they received the transfers in good faith. SolarSense claims its good faith is evidenced by
 19 the fact that it declined Mr. Carpooff's invitation to repay SolarSense's investment. While the
 20 payments were paid to a limited control account at KeyBank in the name of SolarSense, KeyBank
 21 asserts that SolarSense was the initial transferee and that as a subsequent transferee it is insulated
 22 unless the Trustee prevails in negating SolarSense's good faith.

23 **Complexity of litigation and attendant expense, inconvenience and delay**

24 22. This is a significant consideration that also militates in favor of approval of the
 25 Settlement Agreement.

26 23. In sum, although many of the claims outlined above are typical claims litigated
 27 before this Court, they still require retention of (at least) a banking expert as it relates to KeyBank's
 28 actions and inactions, and possibly for the "initial transferee" analysis. Moreover, while the

1 Trustee conducted three Rule 2004 examinations, she would need to conduct depositions of
 2 SolarSense, KeyBank and AEIP representatives and/or employees (as well as other persons, such
 3 as former insiders of the Debtors). In addition, KeyBank and the SolarSense Parties would conduct
 4 their own depositions and KeyBank presumably would retain its own expert(s). Although the
 5 Trustee's counsel is compensated on a contingency fee basis, prosecution of this proceeding would
 6 result in substantial expert fees and other typical litigation-related expenses. Here, the Trustee
 7 expects those costs would have been meaningful and substantial. The settlement avoids the estate
 8 incurring those expenses.

9 24. While SolarSense has filed a claim and submitted itself to the jurisdiction of the
 10 Court, KeyBank has not and would be entitled to a jury trial which would potentially cause
 11 additional delays and expense (such as a jury consultant) and the case to be tried (at least in part)
 12 in District Court.

13 25. The Settlement Agreement addresses these concerns. The parties avoid litigating
 14 fact-specific claims with the associated expense and delay of doing so. Here, there is meaningful
 15 benefit to the estates in resolving this matter pre-suit, without further risk, and before substantial
 16 expenses are incurred.

Collectability

18 26. This consideration militates in favor of approval of the Settlement Agreement.

19 27. Collectability is an issue with respect to the SolarSense Parties. In response to the
 20 Trustee's request, the SolarSense Parties provided the Trustee with confidential materials
 21 regarding its financial capacity. From review of these materials, the Trustee believes that there is
 22 meaningful risk of non-payment by the SolarSense Parties if the Trustee were to obtain a judgment
 23 materially in excess of the amounts SolarSense has agreed to pay under the Settlement Agreement.

24 28. Collectability is not an issue with respect to KeyBank.

Paramount interest of creditors

26 29. This is a significant consideration that militates in favor of approval of the
 27 Settlement Agreement.

28

1 30. The Settlement Agreement provides a \$15.125 million payment, representing
 2 disgorgement of the majority of the transfers the Trustee would seek to avoid and recover. This is
 3 an excellent outcome when measured against potential defenses and litigation risks, as well as the
 4 professional costs associated therewith. As a pre-suit resolution, the Trustee is eliminating any
 5 delay in monetizing these claims and efficiently administering the estates for the benefit of
 6 creditors. The settlement also enables the Trustee and her counsel to focus on other substantial
 7 litigation claims against other third parties in these bankruptcy cases, which is a meaningful
 8 consideration given the Trustee expects litigation recoveries to provide the bulk of the recoveries
 9 to creditors.

10 31. While the SolarSense Parties will make payments over time, there is a meaningful
 11 initial payment (by both KeyBank and the SolarSense Parties) and adequate collateral and
 12 incentive for the SolarSense Parties to make the remaining payments. Their failure to do so would
 13 jeopardize their future business prospects.

14 32. For all the reasons discussed in this Motion, the Settlement Agreement favorably
 15 and immediately avoids complex litigation claims with meaningful litigation risk. Thus, approval
 16 of the Settlement Agreement is in the paramount interest of creditors.

17 **IV. Payment of Contingency Fee**

18 33. Meland Budwick, P.A., as special litigation counsel, is to be compensated on a pure
 19 contingency fee basis of 25% of any recovery obtained.⁶ Since its retention in December 2019,
 20 while the firm has been reimbursed certain out-of-pocket costs, it has not received any
 21 compensation. The Trustee seeks allowance of, and authority to pay, a 25% contingency fee as the
 22 Trustee receives each of the KeyBank and SolarSense Payments, without the need for further Order
 23 of the Court.

24 34. Pursuant to 11 U.S.C. § 330(a), the bankruptcy court reviews the services the
 25 professional provided, and decides whether the requested compensation is reasonable. The Trustee
 26 submits that the requested contingency fee satisfies this standard given, among other things, (1)
 27

28 ⁶ ECF Nos. 1490 and 1502.

1 25% is a materially lower percentage than often charged by contingency counsel;⁷ (2) the
2 contingent terms of payment were pre-approved by the Court one year ago upon notice to all parties
3 in interest; (3) with the limited assets of the estates, counsel's contingency arrangement provided
4 benefit to the estate at the forefront, with risk shifted from the estates to counsel (no fees unless
5 and until recovery); (4) counsel performed significant work (including formal and informal
6 discovery) on this claim and the surrounding facts, in investigating (including formal motion
7 practice), analyzing, and asserting (informally) the potential claim, in a high-quality manner; plus
8 (5) all other factors which support the award.⁸

9 35. Moreover, in a financial fraud case much of special counsel’s investigatory function
10 is to analyze the facts and circumstances related to numerous potential targets to determine where
11 claims do or do not exist. Here, counsel has invested substantial efforts and resources confirming
12 the estate likely does not hold claims against certain potential targets. Under the fee agreement,
13 counsel receives no compensation for those efforts, even though they provide substantial benefit
14 to the estate. The Trustee submits that these efforts, for which counsel receives no compensation,
15 should be considered as well.

V. Conclusion

17 36. Based upon the foregoing, the Trustee requests an order approving the Settlement
18 Agreement, as well as the contingency fee, and granting such other and further relief as this Court
19 deems just and proper.

20 37. The Trustee has filed a motion seeking to consolidate the Debtors' estates.⁹
21 Pending a ruling on that motion, the Trustee requests that the KeyBank Payment and SolarSense

⁷ See *In re Private Asset Grp., Inc.*, 579 B.R. 534, 544-45 (Bankr. C.D. Cal. 2017); see also *In re Pearlman*, 2014 WL 1100223, *3 (Bankr. M.D. Fla. Mar. 20, 2014) (“Resting again on its independent judgment, the Court finds the 35% contingency fee to be reasonable and in line with similar non-bankruptcy rates.”).

⁸ Special counsel: (1) performed a significant amount of high-quality work; (2) addressed difficult factual and (albeit to a lesser extent) legal questions, including in the investigation-phase; (3) employed significant skill, which was required; (4) obtained the result, both substantively and the timing, which is an excellent result for the estates; (5) performed its work efficiently; (6) has a high level of experience, reputation, and ability; and (7) was met with significant opposition.

28 || ⁹ ECF No. 2324.

1 Payments be allocated *pro-rata* as between Distribution and Solutions based on the amounts of the
2 Distribution Transfers and the Solution Transfer (81.7% to Distribution and 18.3% to Solutions).

3 DATED: December 30, 2020.

4 **MELAND BUDWICK, P.A.**

5 /s/ Michael S. Budwick
6 Michael S. Budwick, Esq.
7 Attorney for Christina Lovato, Trustee

8 **HARTMAN & HARTMAN**

9 /s/ Jeffrey L. Hartman
10 Jeffrey L. Hartman, Esq.
11 Attorney for Christina Lovato, Trustee